O. Pleaders / 44

1944.

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File No.

Legal Department

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Subject:—

Opinions Under the Bombay Pleaders Act, 1920.

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether a pleader can as of right be entitled to appear in proceedings before a Mamlatdar under the Bombay Tenancy Act, 1939.

Under sections 7 and 8 of the Bombay Pleaders Act, 1020, a pleader is entitled to practise (a) in any civil or criminal court(b) in or before any other court or tribunal or persion in or before which or whom pleaders are or may hemse after be entitled by law to practise and (c) before any public officer in any of the following proceedings:-

An investigation held in accordance with the first paragraph of section 73 and appeal under section 77 of the Bombay Hereditary Offices Act;

Proceedings under section 87 of the Bombay Land Revenue Code, 1879;

Proceedings before a Tribunal of Arbitration under the Bombay Town Planning Act, 1915;

Such proceedings under any enactment in force in the Bombay Presidency as the Provincial Government by notification in the official Gaaette may specify.

"Mamlatdar" as defined in section 2(5) of the Bombay Tenancy Act, 1939, includes a mahalkari and any other officer whom the Provincial Government may appoint to perform the duties of a Mamlatdar under this Act. It is clear from this provision that a mamlatdar exercising the powers vested in him under the Act is not a civil Court. Nor are the proceedings before him under the Act specified by the Provincial Government by a notification in the official Gazette as proceedings where a pleader is entitled to appear. It is therefore manifest that a pleader is not entitled to appear in proceedings before a Mamlatdar under the Bombay Tenancy Act.

In assuming that a court is constituted under the Bombay Tenancy Act the Commissioner, N.D. seems to have relied on G.R.(R.D.) No.9402/39, dated 20th May 1944; but that

G.R.does not appear to support the assumption of the Commissioner. No court is constituted under the Bombay Tenancy Act. Consequently the view taken by the Commissioner, Northern Division that a pleader is entitled to appear in proceedings under the Bombay Tenancy Act does not appear to be correct.

The proceedings beforea Mamlatdar under the Bombay Tenancy Act are in the nature of judicial proceedings and his orders have the force of decrees. If Government considers that it is not only desirable but proper that pleaders should be entitled to appear in these proceedings, a notification may be issued under the last paragraph of clause(c)and(d) of sections 7(1) and 8 rdspectively of the Bombay Pleaders Act, 1920.

Sd/-P.N.M.
2-11-44

Remembarncer of Legal Affairs.

U.R. to R.D., No. 7608, dated the 3rd November 1944.

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Office of the R.L.A.

It appears that primary teachers in Ahmedabad filed 198 suits in the Court of Small Causes, Ahmedabad, claiming personal pay from the District School Board and District Local Board, Ahmedabad. Mr. Swaminarayan, Assistant Government Pleader was engaged by the District Local Board and School Board jointly on a fee of Rs.30 per suit irwespective of the amount claimed. While the suits were pending both the District Local Board and School Board, Ahmedabad, were superseded with the result that all the property of the Boards vested in Government. On a questic being raised as to whether Government was a necessary party, the Small Causes Courts, Ahmedabad, held that Government was a necessa ary party and returned all the plaints to the plaintiffs for presentation to the proper court i.e. the First Class Court, Ahmedabad. In the meantime Mr. Swaminarayan recovered in full fees approximately amounting to Rs.6000 from the Committee of Management. After the plaints were presented to the Frist Class Court the Chairman of the Committee of Management wrote to Mr. Swaminarayan thus: ""Unless the Remembrancer of Legal Affairs objects your fees for defending the suits filed by teachers against the District Local Board and District School Board are fixed at Rs.15 per suit from both bodies jointly". The Examiner, Local Fund Accounts, Bombay, has taken serious objection both to the payment of a large amount of fees already paid and to the the payment of fresh fees for appearence in the Frist Class Court- the former on the ground that the contentions in all suits being common the engagement of Mr.Swaminarayan in one suit only on the a fee of Rs.30 would have been sufficient and the latter on the ground that Mr.--- Swaminarayan having got payment of full fees without doing any substantial work could not claim fresh fees for his appearance in the Frist Class Court, Ahmedabad. The newx Chairman of the Committee of Management has requested the R.L.A. to advise whether Mr.Swaminarayn can claim fresh fee fees for his appearance

P.T.O.

in the Frist Class Court, Ahmedabad.

Mr. Swaminarayan appears to rely on Mohini Mohan Das v. Kunj Behari Das A.I.R. 1943 Cal. 450 where it was held that when a plaint is filed in a new court after being returned by another it is a new suit to all intents and purposes and not merely a continuation of the former. But "Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there are not intended to be the exposition of the whole law, but governed or qualified by the particular facts of each case in which such expressions are to be found". (1901A.C. 495 at P.506). In A.I.R. 1943 Cal 450 the point raised was whether on a plaint returned being filed in a newx court the suit should be taken up frqmthe stage at which it was left. Consequently the decision in that case related to that point in the suit and no generalisation can be made that for all purposes the suit filed in the new court is to be treated entirely as a fresh suit. In prabhakar Bhat v. Vishwambhar Pandit(8Bom.313 at p.317) the Full bench of the Bombay High Court observed: Where a court fee on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fee thus paid or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one". Those observations have been quoted with approval in Ganesh Tavanappa v. Tatya Bharmappa 51 Bom.236. There is also no provision in the Bombay Pleaders Act, 1920 expressly providing that in similar circumstances the party would be liable to pay fresh fees to his pleader as if it were a new suit. That being so, there is no reason why the same equitable principle laid down in 8 Bom. 313 should not be followed even in the matter of payment of pleader's feesxin which

case Mr. Swaminarayan would be entitled to the balance of fees computed according to rules after giving credit for the amount which he has already received. But Mr. Swaminarayan appears to rely on section 3 of the Legal Practitioners(Fees) Act, 1926 which provides that any legal practitioner who acts or argees to act for any person may by private agreement settle with such person the terms of his agreement and the fee to be paid for the professional service. It is true that the Chariman of the Managing Committee wrote to Mr.Swaminarayan agreeing to pay again Rs.15 per suit, provided the R.L.A. had no obection. It is not understood how R.L.A. could object to any agreement to pay such fees. What the Chariman However appears to mean is the opinion of the R.L.A. If so, all that the R.L.A. can say is that it seems reasonable that the equitable principle laid down in 8 Bom.313 should followed in the present case, if either of the parties wants to stand on its rights and desires to have a decision of the court the proper course would be to apply for an order of the court under section 29 of the Bombay Pleaders Act, 1920.

Sd/- P.N.M.
14-12-44

Remembrancer of Legal Affairs.

U.R. to G.D.No. 8820,dated the 14th December 1944.

S.A.S.
Id/- R.T.K.
14-12

A.L.B.
Id/- R.S.H.
14-12

R.L.A.

A copyxof this should be sent to the D.M.for infoemation.

Id/- P.N.M.

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